

U. S. S E N A T E



# Republican Policy Committee

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## **EPA Polarizing Honest Debate**

### **EPA Proposes Massive Clean Air Changes**

Last Wednesday, just before Thanksgiving Day, the Environmental Protection Agency released two proposals to impose massive new air pollution controls by changing the National Ambient Air Quality Standards (NAAQS) for particulate matter and urban ozone.

First, the Agency proposes to dramatically increase regulations on emissions of fine particulates of less than 2.5 microns in diameter (mostly large molecules of sulfates, nitrates, and organic compounds, as well as some fine "soot"). This new standard will be in addition to the current standard, which focuses on particulates of 10 microns or smaller (PM-10 standard). Ten microns is about one-fifth the width of a human hair. The EPA claims the new particulate standard will extend the lives of as many as 20,000 people a year. In terms of its regulatory effect, the new PM-2.5 particulate standard will quadruple the number of counties in noncompliance to 167 counties (74.3 million people), compared to the 41 counties (28.8 million people) that are in nonattainment with the current PM-10 standard.

Second, the EPA proposes a revision to the NAAQS for ozone. The proposal will reduce the "allowable level" for urban ozone (smog) from the current standard of 0.12 parts per million cubic feet of air to 0.08 parts per million. This change in the ozone standard is expected to triple the current number of counties in ozone nonattainment, increasing restrictions in 335 counties (122 million people), instead of the current 106 counties (74.5 million people).

Due to the potential of these regulatory proposals to significantly expand current Clean Air Act regulations, it is anticipated that several Senate committees will conduct oversight hearings to review both the substance of the agency proposals and EPA's compliance with appropriate procedures.

## **Issues for Congressional Consideration**

- ▶ ***Health Risks from Dirty Air Poorly Understood.*** The EPA bases its proposals on epidemiological studies (analyzing human health statistics such as hospital admissions and causes of death) which indicate a statistical correlation between breathing urban air and an increased frequency of respiratory illnesses and premature mortality. The EPA estimates that as many as 40,000 Americans die each year before they otherwise would due to breathing urban air. Clearly, the magnitude of this health risk is of concern to all policy makers. However, exactly which components in urban air are causing the health

problems is not yet well understood. EPA's preference for regulating every fine particle in the air before understanding the real causes of the observed illnesses and premature deaths risks huge expense with no guarantee there will be any significant health benefits. EPA is not just using the meat axe instead of the scalpel, it is operating before the patient's diagnostic tests are even completed.

► ***Existing Particulates Studies Do Not Pinpoint Causes of Health Problems.*** The epidemiological studies upon which EPA is relying generally show a linkage between breathing urban air and more illnesses and premature deaths. The studies, however, do not explain "causality." For example, EPA does not know:

-- Which particulates — sulfates, nitrates, organics, pollen, indoor air pollution, or even roach dropping dust — cause the illnesses and premature deaths?

-- At what concentrations, durations, temperatures, or humidity levels are the particulates harmful?

-- Do particulates cause the health problems, or do short-lived chemicals in these fine particulates, including free radicals, or far tinier particles called "nanoparticles" cause the health damage? In July of 1995, the ex-chairman of EPA's Clean Air Science Advisory Group (from 1978 to 1982), UCLA Professor Sheldon K. Friedlander, stated that although "recent data indicate that there is an enhanced risk from fine particles smaller than one micrometer, the why of this data is not very well understood. Any new standard setting is to be done carefully," he warned, "because the wrong regulations could cost U.S. industry and the public billions of dollars while leaving the real culprit untouched."

► ***EPA Does Not Know Which Areas Contain Harmful Levels of Particulates.*** At this time, EPA has limited data on particulates concentrations. It does have the data collected by a modest number of PM-10 monitors (1700 nation-wide) and by less than 50 monitors able to detect at or below PM 2.5 (most of which are run by the National Park Service in rural areas to monitor "visibility"). Worse, EPA has little data isolating particulates by type. This scarcity of data compromises the epidemiological studies upon which EPA relies (most of which are based on PM-10 data), as well as the reliability of EPA's cost estimates for compliance with the new standard (see discussion of costs, below).

► ***EPA Is Revising its Particulate Standards Instead of Seeking Better Data.*** EPA reached a court settlement with the American Lung Association (with a deadline after the presidential elections) requiring EPA to *review* (not necessarily "revise") its current particulates standard. This decision was to be issued in proposed form by November 29, 1996, and in final form by June 30, 1997. EPA has opted to *revise* the current particulates standard instead of exercising its legal option to wait until it has better health science and monitoring data. The agency's decision to go forward with a change in the NAAQS for particulates appears to disregard the conference report to the 1997 VA, HUD Appropriations bill (PL 104-204), which encouraged EPA to consider the option of not

changing the current standard until further health and monitoring data are developed. This congressional preference was backed up with approval of EPA's full FY 1997 funding request of \$18.8 million for research and monitoring of particulate matter, and a pledge in the conference report "to continue to support EPA's research and monitoring programs to develop the necessary data as quickly possible."

► ***EPA Has Little Scientific Justification for Changing the Ozone Standard.***

The EPA does not appear to make a persuasive case that stricter urban ozone standards are needed. Indeed, many health risk analysts have concluded that the current program is already extremely costly in relation to the observed health benefits. Some are even arguing that it is unclear whether *any* additional health benefits will be forthcoming from lower ozone standards (e.g., Professor Kenneth Chilton, Director of the Center for the Study of American Business, November 1996). Moreover, EPA is revising the standards while the current ozone regulatory program is in the process of being implemented and is showing increasing success in reducing ambient ozone levels. Somewhat disingenuously, EPA has been sitting on its annual *National Air Quality and Emissions Trends Report* (due last spring), which is purported to indicate increasing compliance by numerous nonattainment areas. Finally, EPA has declined to net its proposal's health benefits against the health costs that will result from reducing urban ozone's benefit as a protective screen from ultraviolet sunlight. In the past, the agency has predicted high incidences of skin cancer and cataracts from decreased ozone protection in order to bolster its decisions to accelerate the phase out of stratospheric ozone depleting chemicals.

► ***EPA Has Stated Its Refusal to Conduct a Small Business Analysis for these Rules.*** In a letter sent on November 19, 1996, by Assistant EPA Administrator Mary Nichols to eight Republican Senators, Nichols declared, "Once a NAAQS is set or revised, the States are primarily responsible for ensuring attainment and maintenance of it." Nichols concludes that the new standards, "if adopted, would not establish any requirements applicable to small entities," and therefore, the agency is not required to conduct a Regulatory Flexibility Analysis, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (PL 104-121). However, EPA "voluntarily" will conduct a general analysis on small business impacts as part of the rulemaking. The evidence to date suggests that EPA is simply not giving sufficient weight to the importance Congress has placed on agencies doing Regulatory Flexibility Analyses. The Regulatory Flexibility Act requires agencies to "describe the impact of the proposed rule on small entities." Under the law, agencies are excused from having to conduct the analysis only if the agency can certify that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." In its attempt to avoid the Regulatory Flexibility Analysis, EPA has misread the statute, inappropriately concluding that agencies only have to analyze costs imposed on small entities that are directly "subject to" the proposed regulations.

► ***EPA Has Issued These Proposed Standards In a Campaign-Mode Style.*** Rather than inviting meaningful deliberation over a serious health issue, EPA has instead chosen to

polarize the debate into its now-familiar format: "You are either with us protecting children, or you favor letting industry poison the air." For example: In its November 27 press release, the agency claims that "the EPA proposal would provide new protection to nearly 133 million Americans, including 40 million children." The agency has tried to make the proposed particulates standard unassailable by claiming up to \$112 billion a year in improved health benefits, while ascribing only a maximum of \$6 billion a year in costs. Worse, the agency's own estimates for its ozone proposal indicate costs could exceed benefits, even though the agency's cost numbers are being resoundingly criticized by industry as being far too low. Although the agency stated in its press release that it "will use the very best science to do what is necessary to protect public health in common-sense, cost-effective ways," the agency's stealth issuance of the proposed rules during the middle of Thanksgiving week and its "in your face" stance of ignoring recent regulatory reform legislation, only serve to reinforce EPA's apparent lack of interest in honest deliberation on these rulemakings.

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